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J. Dalmia Vs. Commissioner of Income-tax, Delhi (Central)

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Court : Delhi

Decided On : Sep-30-1981

Reported in : (1982)31CTR(Del)305; [1982]138ITR653(Delhi)

Judge : D.K. Kapur and; J.D. Jain, JJ.

Acts : Income Tax Act, 1961 - Sections 2(24), 17(3), 22, 23 and 23(1)

Appeal No. : Income-tax Reference Nos. 12 of 1973 and 180 and 181 of 1974

Appellant : J. Dalmia

Respondent : Commissioner of Income-tax, Delhi (Central)

Judgement :

Kapur, J.

1. There are three Income-tax Reference before the court, but they relate to six assessment years, namely, 1963-64 to 1968-69. As the facts are common and only one point arises, it will be convenient to mention the facts first which are quite simple. The assessed is Shri J. Dalmia, a director of M/s.Hari Brothers (P.) Ltd. The Company had provided him a portion of the house situated at 2, Hardinge Avenue, New Delhi, for the purpose of residence. The building is owned by M/s. Dalmia Cement (Bharat) Ltd., of which M/s. Hari Brothers (P.) Ltd. was the managing agent. The rent which was being paid for the whole building was Rs.

4,200 per annum. The assessed was to be assessed in respect of the (rental) value of the premises given to him for the purpose of his residence and he was agreeable to treat the entire amount of Rs. 4,200 as the value. The ITO valued the same at Rs. 12,500. This was confirmed by the AAC and also by the Tribunal. The Tribunal proceeded on the basis that the portion which the assessed was allowed to occupy was the entire first floor of the building. The cost of the building was about Rs. 5,00,000, and hence, the value of Rs. 12,500 taken by the Department could not be treated as excessive. Income-tax Reference No. 12 of 1973, which relates to the assessment years 1963-64 to 1966-67, seeks an answer to the following question :

'Whether, in view of the Rent Control Act the quantum of perquisite should be increased from Rs. 4,200 to Rs. 12,500 in spite of the fact that M/s. Hari Brothers (P.) Ltd. had taken the premises on rent since 1952 and were paying the same rent of Rs. 4,200 p.a. thereafter, and there was also no change in the municipal valuation of the property up to 1965 ?'

2. The question referred for the years 1967-68 and 1968-69 is the subject-matter of Income-tax References Nos. 180 and 181 of 1974. There the question referred is :

'Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in fixing the value of the perquisite at Rs. 12,500 per annum ?'

3. The questions referred involve a somewhat simple point. The landlord or owner of the building is M/s. Dalmia Cement (Bharat) Ltd. The tenant is M/s. Hari Brothers (P.) Ltd., who is paying Rs. 4,200 per annum. The tenant has allowed one of its directors to use half of the building for residential purposes. It may here be said that that half portion contains, according to the ITO, four bed rooms and one dining room on the first floor, one drawing room, three bed rooms, four verandahs, three terraces and a courtyard plus two store rooms and a kitchen and a pantry. The bungalow has about 20 servants quarters which are occupied by the servants of the assessed or his relatives (the number is mentioned as 27 in the Tribunal's order wherein it is stated that the servants quarters are occupied by relatives or servants of the assessed). The built-up area is 16,680 sq.ft. It was on

this basis that the Tribunal thought that the value of Rs. 12,500 taken by the Department was not excessive.

4. What we have to determine in the present case is whether the value of the perquisite in the hands of the director can be more than the actual amount being paid by the company which has given the assessed rent-free accommodation in the half portion of the house. Section 2(24) of the I.T. Act, 1961, defines 'income' and includes the following items :

'2. (24)(iii) the value of any perquisite or profit in lieu of salary taxable under clauses (2) and (3) or section 17 ;

(iv) the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by a person who has substantial interest in the company, or by a relative of the director or such person, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or other person aforesaid ;....'

5. The value of a perquisite, if not already known, can be evaluated by some known method. But, if the value is already fixed at Rs. 4,200 as far as M/s. Hari Brothers (P.) Ltd. are concerned, the interesting question which arises in this case is whether the I.T. Dept. can re-value the same at a higher figure, or whether the value is not already fixed by the actual rent being by M/s. Hari Brothers (P.) Ltd.

6. It seems to us that it must be kept in mind that the annual value relevant for the purposes of computing income from buildings under the I.T. Act, 1961, is based on the reasonable rent which can be realised from year to year.

7. For this purpose, reference to s. 23 of the Act, as it stood at the relevant time, may conveniently be made. Sub-section (1) stated :

'For the purposes of section 22, the annual value of any property shall be deemed to be the sum for which the property might reasonable be expected to let from year of year.'

8. Thus, the annual value had to be determined not on the actual rent received, but on a notional figure based on the reasonable rent of the property. It is common ground before us that this rent or reasonable rent is Rs. 4,200 per annum in the case of Dalmia Cement (Bharat) Ltd. This value has also been taken by the municipal authorities to be the reteable value. If the reasonable rent is Rs. 4,200 per annum for the whole building, we fail to under stand how the value can be greater in the hands of the directors. If the sum of Rs. 4,200 is reasonable in one case, then Rs. 12,500 is unreasonable for half the building. This follows almost automatically.

9. This raises the question as to how the value is to be determined. Either the ITO must re-determine the annual value in the hands of M/s. Dalmia Cement (Bharat) Ltd., on the ground that Rs. 4,200 does not represent the reasonable rent, and if he does not do so, it must be held that the amount at which the annual value is determined in the hands of the owner of the building is the value of the perquisite in the hands of the present assessed (who in fact is occupying only half the house).

10. As the point has arisen in this case in this fashion, it may be convenient to state the propositions which may arise in different cases. If an employer takes rented premises for the use of an employee, then the rent actually pad determines the value. When the value is known, it is not necessary to re-value the perquisite involved on the footing that the same perquisite could have been obtained for a greater amount. This is particularly true of rented property because the Rent Control Acts have created an anomalous position inasmuch as there can be a wide variation in the rate of rent on account of the date on which the building was occupied or constructed. In the case of old building the rate of rent is quite low because in 1939 or thereabout the rents were very low. In the case of new buildings, the rents are very high. So, we have the situation when for almost identical accommodation the rent may be very high in one case and very law in another. The building in question was taken on rent by M/s. Hari Brothers (P.) Ltd. in 1952 at Rs. 4,200 per annum. The rent seems to be extremely low by the present day standards,but we cannot judge or re-value the rate of rent because of the Rent Control Act.

11. No person can let out property at a rate higher than the standard rent, and this has been accepted by the Supreme Court both for the purpose of the municipal taxation as well as the I.T. Act, viz., Dewan Daulat Rai Kapoor v. New Delhi Municipal Committee : [1980]122ITR700(SC) , and Mrs. Sheila Kaushish v. CIT : [1981]131ITR435(SC) (C.A. Nos. 2110 & 2111 of 1978, decided on August 18, 1981). Thus, if the owner is to be taxed in respect of the annual value, then the standard rent has to be taken into consideration. It may be mentioned here that there was an amendment of the I.T. Act with effect from 1976, which provided in s. 23 that the annual value will be determined either as the reasonable rent for which the premises could be let from year to year, or in case the property was actually let for a greater figure, then that greater figure. In the present case, there is no dying the fact that the entire building is let out to M/s. Hari Brothers (P.) Ltd., for Rs. 4,200 per annum, and that figure, as far as the facts stated before us go, has not been varied in all these years under consideration. It, thereforee, follows that the amount actually being spent by the company to obtain the entire house is only Rs. 4,200 per annum. We fail to understand how the value of this house can be greater when a portion of the premises is occupied by the assessed who is a director of the company.

12. To understand the nature of the perquisite or benefit which is made chargeable under s. 2(24)(iv), we must keep in mind the fact that a director can be paid in cash and he can be in kind. When he is paid in cash, then the quantum of cash paid determines the value. If he is paid in kind by giving him some facilities like rent-free accommodation, or agree servants or a car at the company's expense, and so on, then the amount actually expended by the company determines the value for the purposes of taxation. If the company only pays Rs. 4,200 as rent, then that is the value of the benefit received by the director.

13. To put it in another way, the section makes it plain that any sum paid by the company under an obligation to the director, which would otherwise have been paid by the director, is the value of the perquisite. At the very most, the sum paid by the company to the owner of the building gives the value of the perquisite. So, in our view, the value of the perquisite cannot exceed Rs. 4,200.

14. It is now necessary to examine the various circumstances which may arise in cases of this type.

(1) There may be the case where the employer or company takes rented premises for an employee or director of the company. If the person happens to be an employee, then the value of the perquisite has to be determined in accordance with the actual rent being paid for the property in question. However, r. 3 of the I.T. Rules, 1962, sets out a limit for the purposes of valuation of rent-free accommodation in the case of an employee. This may be five per cent. of the salary or fifteen per cent. of the salary or even more, dependent on the actual amount being paid. So, even if the rent being paid by the employer is more, the value of the perquisite may be less in the hands of an employee. In the case of a director, r. 3 does not apply, so the actual rent will determine the value of the perquisite. This is one class of cases.

(2) Then, there may be the case of a company or an employer giving its own premises for use to an employee or director. In such a case, r. 3 will again put a restriction on the value of the perquisite in the hands of the employee. But, in the case of a director, there will have to be a valuation of the perquisite. For example, in the case of Lakshmipat Singhania v. CIT : [1974]93ITR162(All) , the director concerned was occupying to the company in question. In that case, the value of the rent free accommodation was fixed at Rs. 19,440. It may be noted that in that case there was no dispute regarding the quantification. When property belonging to a company is allowed to be used by a director, then it is not a case of letting out; so the value of the rent-free accommodation has to be determined. In view of the law now settled by the Supreme court in Dewan Daulat Rai Kapoor's case : [1980]122ITR700(SC) , even in such a case the standard rent will determine the value. It was there clearly laid down that the concept of reasonable rent has to be read in the light of the rent control law which specifically enacts that no property can be let out for an amount greater than the standard rent. Assuming that there was a contest, the I.T. authorities would have to find out the standard rent if the same had not already been fixed. So, the value of the rent-free accommodation will have to be determined on the basis of the standard rent of the premises.

(3) Then there can be the case of rent-free accommodation provided to a shareholder. In the case of CIT v. S. P. Jain : [1967]65ITR416(Patna) (Pat), it was held that such income could not be taxable. This was followed by an amendment of s. 2(6C) of the Indian I.T. Act, 1922, which introduced the words 'whether convertible into money or not' into the definition, thus making a benefit not convertible into money taxable. It must be kept in view that the normal rule was that a benefit could be taxable only if it could be converted into money before this amendment was introduced in 1955.

15. Then we have the case of benefit or perquisite which is convertible into money. In such a case the ITO has to determine the convertible value of the benefit.

16. Learned counsel for the department has cited such a case. It is Wilkins (Inspector of Taxes) v. Rogerson : [1963]49ITR395(Cal) (CA) (an English case), in which the employee received gifts in the form of a suit, raincoat or overcoat up to the value of pound 15. The assessed in question had received a suit which had cost pound 14-15s, and the question was what was the value of the perquisite to him. It was held that the suit could be sold only of pound 5 as second-hand and, thereforee, that was the value of the perquisite. It may be seen here that the cost price of the perquisite and its value in the hands of the assessed were not the same. This was a case in which the benefit could be converted into money by selling it. In the case of rent free accommodation, the same is not saleable or transferable. In such a case, it is not convertible into money and has become taxable only because of the amendment to the Indian I.T. Act made in 1955, which makes the perquisite taxable even if it is not convertible into money.

17. Learned counsel for the Department urged that in the present case, the Department was right in taxing the employee by evaluating the benefit on the basis of the rent payable for an equivalent residence. The above English case was also cited with a view to show that the value was not the same, in the hands of the assessed, as the value in the hands of the employer. This may be so in the case of a saleable perquisite or benefit, but it does not apply in the case of a non-convertible perquisite or benefit. In such a case, it is the sum actually expended by the employer or the company concerned, as in the case of the present assessed,

which will determine the value of the perquisite or benefit.

18. It was submitted by learned counsel for the Department that M/s. Hari Brothers (P.) Ltd., was paying a concessional rent because it was the managing agent of M/s. Dalmia Cement (Bharat) Ltd. If it was a concessional rent, then it should have led to the fixing of a larger annual value in the hands of M/s. Dalmia Cement (Bharat) Ltd. The transaction of lease or letting was one between the landlord, M/s. Dalmia Cement (Bharat) Ltd., and the tenant, M/s. Hari Brothers (P.) Ltd. Any contention that it was a concessional amount should have been raised in the assessment of either of these parties. We fail to understand how the person who has been given rent-free accommodation can be held responsible for paying (tax on ?) a greater amount than was assessed in the hands of M/s. Dalmia Cement (Bharat) Ltd. As already mentioned, the 'annual value' has to be fixed on the basis of the rent which can reasonable be received from year to year. It is not the actual rent but the reasonable rent which determines that value. It was for the Department to find out the reasonable rent when the assessed is the owner of the house. We must accept as a fact that the Department held Rs. 4,200 annually to be the reasonable rent for this property; equally the reasonable rent for half of that property cannot be more than Rs. 4,200 in the hands of the present assessed. In fact, this question could not be re-opened in the case of the present assessed.

19. In this view of the matter, we would answer the questions referred to us for the several in favor of the assessed and against the Department. We would hold in ITR No. 12/73 that the quantum of perquisite could not be increased from Rs. 4,200 to Rs. 12,500 and for the assessment years 1967-68 to 1968-69, we would answer the question referred in the negative and hold that the value of the perquisite can at the must be Rs. 4,200 per annum which was the amount accepted by the assessed. The assessed will be entitled to costs. Counsel's fee Rs. 500.

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